



December 22, 2010

Sharon Gillett, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

Re: WC Docket No. 02-60

Dear Ms. Gillett:

On behalf of the Health Information Exchange of Montana, Inc. (HIEM), I write to request that the Wireline Competition Bureau (WCB) grant HIEM a nine-month extension of the Rural Health Care Pilot Program (RHCPP) June 30, 2011 deadline to select a vendor and request funding commitment letters from the Universal Service Administrative Company (USAC). HIEM also requests that the WCB waive the requirements of Paragraph 94 of FCC Order 07-198 (November 2007) to the extent it bars RHCPP projects from invoicing beyond five years from the date of their *initial* FCL and instead permit invoicing until five years after the date of *each* FCL.<sup>1</sup>

### Background

The HIEM has made significant progress in its network build throughout a large and diverse geographic area in northwest and northcentral Montana. Our network design requires a phased approach with a variety of strategies for the various segments we are attempting to connect. From the beginning of our project, HIEM anticipated filing numerous requests for proposals (RFP) (currently estimated at eight), with each RFP representing an intensive and time consuming process. When combined with Montana's typically short, weather-constrained construction season, the window for timely project completion is extremely limited.

To date, we have:

- Succeeded in laying fiber across the Continental Divide, a stretch of over 185 miles through very mountainous terrain (RFP #1). This backbone will be "turned over" to the HIEM in January 2011, nearly two years after construction commenced.
- Selected a vendor to construct approximately 90 miles of fiber to the remote community of Libby, Montana – location of one of the largest Super Fund clean-up sites in the nation (RFP #2).

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<sup>1</sup> This request was previously put forward by the Michigan Public Health Institute ("MPHI"). See Letter from Jeffrey R. Taylor, Executive Director, MPHI to Sharon Gillett, Chief, FCC WCB, WC Docket No. 02-60, at 2 (dated Nov. 17, 2010). HIEM supports MPHI's request.

- Completed engineering and cost estimates for all local connections from the Continental Divide backbone to HIEM participating sites (RFP #3).
- Entered into a bandwidth exchange agreement via HIEM excess capacity with a local non-profit telephone cooperative to provide connections from this backbone to seven healthcare and healthcare education facilities at no cost to the RHCPP.
- Completed the RFP review process for temporary broadband connections to an additional thirteen eligible health care sites and will be awarding contracts to two area telcos in the next month (RFP #4).
- Posted a RFP for electronics/optonics to light HIEM fiber and provide significantly improved bandwidth connections to all participating HIEM sites (RFP #5).

HIEM has also been working with two promising partners to secure match funding and to sustain our project through leasing excess capacity bandwidth. However, both efforts will likely require action from the bi-annual Montana Legislature, which only meets for 90 days in odd numbered years. We will not know until late April 2011 the probability of securing these financial relationships and thus it is highly unlikely we would be able to meet the current June 2011 deadline for applying for FCLs. Such partnerships are very important to HIEM's ability to successfully complete our fiber network development.

HIEM acknowledges and appreciates that WCB previously extended the deadline to apply for funding commitments by one year, until June 2011.<sup>2</sup> In extending the deadline, WCB recognized that RHCPP projects faced a variety of obstacles in meeting the original 2010 deadline including complex program requirements and processes, associated paperwork preparation time, a general downturn in the economy which made securing matching funds more difficult and the complexity of preparing and posting RFPs and negotiating contracts with vendors. For its part, HIEM has dedicated additional resources to the RHCPP effort and, as demonstrated above, has taken full advantage of the earlier extension. However, all of the obstacles previously identified by WCB continue to present challenges today. As a result, accomplishing fully the objectives set forth in our RHCPP application will require more time than allowed given the existing June 30, 2011 deadline to apply for funding commitments.

An additional obstacle to HIEM achieving RHCPP objectives is created by Paragraph 94 of FCC Order 07-198 which establishes the deadline for USAC's processing of invoices as five years from the date of each project's *initial* FCL. As noted above, HIEM's network design required a phased approach with our first FCL (to establish the fiber backbone across the Continental Divide) issued on February 12, 2009. This FCL was one of the earliest awarded under the RHCPP and established an invoicing deadline of February 2014 for our project.

Only one additional small FCL has been requested and awarded to HIEM since then (RFP #2; which is now complete). All other necessary FCLs still need to be awarded following completion of contract negotiation, identification of match funding, and filing of standard Forms 465 and 466. With three RFPs currently in process and up to three more that still must be initiated, tying all of the invoicing deadlines to

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<sup>2</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 1423 (Wireline Comp. Bur. 2010) (*2010 Pilot Program Extension Order*). The Commission delegated authority to WCB to waive relevant Commission rules "to the extent they prove unreasonable or inconsistent with the sound and efficient administration of the Pilot Program." See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, ¶ 124 (2007); see also *2010 Pilot Program Extension Order* at ¶ 6.

a single date established by issuance of the first FCL is impractical for a multi-stage construction effort such as ours.<sup>3</sup>

Moreover, other Pilot Program participants that wait until 2011 to submit their first Form 466 package will receive their initial FCLs in mid-2011 and thus will be able to invoice through mid-2016. Because HIEM had early success in initiating our project, we will be unable to invoice past February 2014. We do not believe FCC intended to treat RHCPP participants that have been able to complete early phases of their projects so differently from projects that have been slower to achieve program objectives. Waiving the requirements of Paragraph 94 to the extent it counts the five-year invoicing period from the *initial* FCL, and instead counting five years from the date of *each* FCL, would remove this barrier. Such a change would add no additional administrative burden on USAC or the FCC because numerous projects will already be submitting invoices until mid-2016.

### **HIEM Extension Requests**

For the reasons discussed above, HIEM believes there is good cause to:

- 1) Grant a nine-month extension to March 31, 2012 for HIEM to select vendors and apply for Funding Commitment Letters;<sup>4</sup>
- 2) Waive Paragraph 94 of FCC Order 07-198 to the extent it uses the initial FCL to establish the deadline for USAC's processing of Pilot Program invoices and instead use the date of *each* FCL.

The Rural Health Care Pilot Program has provided critical funding to assist HIEM in constructing a broadband network that is well positioned to link up health care providers across Northwest Montana. We remain enthusiastic about this opportunity and desire to use all available funding to build an effective, high-quality healthcare network in rural/frontier Montana. The proposed extensions will ensure HIEM can complete the selection of vendors, apply for FCLs, and efficiently develop our full network by March 2012.

Should you have any questions or require additional information, please contact me directly at 406-751-6687 or [kipsmith@krmc.org](mailto:kipsmith@krmc.org).

Sincerely,



Kipman Smith  
Executive Director

cc: Trent Harkrader, Chief, Telecommunications Access Policy Division  
Jamie Susskind, Attorney Advisor, Telecommunications Access Policy Division  
Jeffrey A. Mitchell, Esq., Lukas Nace Gutierrez & Sachs LLP

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<sup>3</sup> Indeed, it may be the five-year deadline was set with the expectation that project FCLs would all be issued in a single program year.

<sup>4</sup> The HIEM also supports the Indiana Telehealth Network's request for a one-year extension of the deadline to seek funding commitments. See Letter from Don Kelso, Executive Director, Indiana Rural Health Association, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 02-60 (dated Nov. 17, 2010).